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SUBJECT: MEETING OF USUN LEGAL ADVISER WITH ICTR PRESIDENT
BYRON

¶1. (U) SUMMARY: On Friday, December 4, USUN Legal Adviser Mary McLeod (filling in for Ambassador DiCarlo) met with International Criminal Tribunal for Rwanda (ICTR) President Byron. Byron addressed three issues: witness protection, ICTR fugitive Felicien Kabuga, and the deadline for 11bis referrals. END SUMMARY.

¶2. (U) Byron noted that in his statement to the Security Council the previous day he had invited reconsideration of witness protection issues, the need for which is disproportionate to the workload and cost involved. He is skeptical, in particular, that many if any witnesses will no longer want protection. He suggested a modification of rules, downgrading to an administrative decision situations in which national judicial authorities want access to a protected witness or to protected testimony. Also, Byron noted that ICTR experts are still studying the issue of general declassification of information but that in his opinion general policies don't work. Byron and USUN/L briefly discussed similarities and differences to the International Criminal Tribunal for the former Yugoslavia (ICTY) procedures.

¶3. (U) Byron noted ICTR's support for the intensification of pressure regarding Kabuga, asked to what extent such pressure could be increased, and discussed problems getting relevant information from Kenya. Byron stated that a formal resort to the Security Council was a last option, but that the possibility might force Kenya to act.

¶4. (U) As the Tribunal comes to a close, the ICTR faces the problem of coordinating referrals under Rule 11bis. Byron identified timing as the primary problem with 11bis referrals and has suggested that a deadline of January 2010 (or March at the latest) be imposed. He noted that once proceedings are filed, four months must be allocated for a decision and perhaps six months for review. Also, even if the decisions require referral to take place, further action by the Tribunal may be necessary. Byron noted that US Ambassador-at-Large for War Crimes Issues, Stephen Rapp, mentioned during their meeting on December 3 the possibility of creating a hybrid tribunal using ICTR judges. Byron stated that this proposal would find support within ICTR ranks. USUN/L clarified that the State Department does not yet have a final position on the possibility of a hybrid tribunal. (COMMENT: Byron seemed to be thinking of using hybrid tribunals in the short term, before the residual mechanism is established. END COMMENT)
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